

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL PUBLIC RADIO, INC.)	
1111 North Capitol Street, NE)	
Washington, DC 20002)	
)	
and)	
)	
SEAN MCMINN)	
1660 Lanier Place, NW)	
Washington, DC 20009)	Case No:
)	
Plaintiffs,)	
)	
v.)	
)	
OFFICE OF MANAGEMENT AND BUDGET)	
725 17th Street, NW)	
Washington, DC 20503)	
)	
)	
Defendant.)	
_____)	

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF FOR
VIOLATION OF THE FREEDOM OF INFORMATION ACT**

Plaintiffs National Public Radio, Inc. and Sean McMinn (collectively, “NPR”), by their undersigned attorneys, allege as follows:

Introduction

1. NPR brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, to enjoin the Office of Management and Budget (“OMB”), a branch of the Executive Office of the President, from failing to respond to a request sent by NPR to the OMB on December 26, 2018 (the “Request”), and directing the office to promptly disclose any records responsive to the Request.

2. Although the OMB acknowledged receipt of NPR's Request on January 31, 2019; to date, the OMB has failed to issue a determination on the Request or further respond to the Request in any manner.

3. The FOIA requires a government agency to respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which of the requested records it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. *See* 5 U.S.C. § 552(a)(6)(A)(i). In the event of "unusual circumstances," a government agency may take up to 30 working days to respond to a FOIA request. *Id.* § 552(a)(6)(B)(i).

4. If the agency fails to issue its determination on a request within this required time period, the requester may bring suit directly in federal district court without exhausting administrative appeal remedies. *See Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 182-83 (D.C. Cir. 2013).

5. Accordingly, because NPR submitted the Request on December 26, 2018, the OMB was required to issue a determination on the Request by January 25, 2019—or at the latest by February 8, 2019, in the event of unusual circumstances. In failing to do so, the OMB has violated the FOIA, and NPR has standing to sue to vindicate its right to receive a timely determination on its Request.

6. The Freedom of Information Act "focuses on the citizens' right to be informed about 'what their government is up to,'" by requiring the release of "[o]fficial information that sheds light on an agency's performance of its statutory duties." *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 750, 773 (1989) (citation omitted). "[D]isclosure, not secrecy, is the dominant objective" of FOIA. *Dept't of Interior v. Klamath Water Users*

Protective Ass’n, 532 U.S. 1, 8 (2001) (internal quotation marks and citations omitted). NPR plays a critical role in providing information to citizens about “what their government is up to.” Indeed, the First Amendment’s guarantee of freedom of the press is meant to enable journalists to play an “essential role in our democracy,” to “bare the secrets of government and inform the people.” *New York Times. Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J. concurring).

7. Through its FOIA Request, NPR seeks to fulfill its journalistic function and to shine a public light on the operations of the OMB and its director.

Jurisdiction and Venue

8. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a) and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

9. Plaintiff National Public Radio, Inc. is a non-profit multimedia organization and the leading provider of non-commercial news, information, and entertainment programming to the American public. NPR’s fact-based, independent journalism helps the public stay on top of breaking news, follow the most critical stories of the day, and track complex issues over the long term. NPR serves an audience of 28.5 million people who listen to NPR programming and newscasts each week via more than 1,000 non-commercial, independently operated radio stations. NPR also reaches millions of people via its digital properties, including podcasts (which see nearly 24 million unique users each month), social media accounts (which have about 6 million followers on Facebook and about 7.7 million followers on Twitter), apps (which see

about 1.9 million unique users each month on the NPR App and about 530,000 unique users each month on NPR One), and NPR.org (which sees nearly 40 million unique visitors each month).

10. Plaintiff Sean McMinn is a resident and citizen of the District of Columbia, and a distinguished journalist who works as the data editor for NPR's News Apps team at NPR's headquarters in the District of Columbia. Mr. McMinn has reported on Congress and national politics for years, and also specializes in designing infographics and building interactive models to help Americans better understand their government. His reporting on flaws in FEMA's recovery programs led to the agency making changes to better serve communities struck by disaster. Mr. McMinn also teaches at Northwestern University's Medill School of Journalism.

11. Defendant The Office of Management and Budget ("OMB" or "Defendant") is a division of the Executive Office of the President. Upon information and belief, the OMB has possession and control of the records sought by the Request.

Statutory and Regulatory Background

12. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

13. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which of the requested records it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i). In the event of unusual circumstances, an agency can take up to 30 working days to issue its determination. *Id.* § 552(a)(6)(B)(i).

NPR's Request for Email Records Held by the OMB and and the OMB's Failure to Respond

14. On December 26, 2018, NPR submitted the Request for email records maintained by the OMB. Specifically, NPR requested "access to and copies of every all-staff email sent to

Office of Management and Budget employees during March 2017 and March 2018 by director Mick Mulvaney.” Attached as Exhibit A is a true and correct copy of the Request.

15. The Request further explained why NPR sought such information, stating: “The public has an urgent need for information about communication between Mr. Mulvaney and public servants who work underneath him because of his pending promotion to be the Chief of Staff of the President of the United States. Additional information made public about how Mr. Mulvaney manages staff will help inform citizens who want information about how he will run the White House.” Ex. A at 1.

16. NPR requested production of the information “in digital copies sent via email;” and asked the OMB to waive any applicable fees because the information was sought by a representative of the news media and release of such information would “contribute significantly to public understanding of government operations and activities.” *Id.* at 1.

17. By email to Mr. McMinn dated January 31, 2019, the OMB acknowledged that it received the Request, and assigned it OMB FOIA number 19-109. The OMB further stated that “[y]our request has been logged in and is being processed.” Attached as Exhibit B is a copy of the OMB’s email.

18. To date, the OMB has not issued a determination on the Request. Because 30 working days have passed since NPR submitted the Request, the OMB has violated the FOIA by failing to timely issue its determination.

PLAINTIFFS’ CLAIM FOR RELIEF

COUNT I (Failure to Issue Determination on FOIA Request)

19. Plaintiffs repeat and re-allege paragraphs 1-18.

20. NPR properly submitted a FOIA request for documents from the OMB—namely, copies of all-staff emails sent from OMB Director Mick Mulvaney during the months of March 2017 and March 2018.

21. Defendant failed to issue a determination on NPR's Request within the time required by the FOIA statute.

22. NPR has a statutory right to receive a timely determination on its Request from the OMB.

23. As a result of the actions complained of herein, NPR's access to government records that it is entitled to review has been improperly delayed, in violation of the FOIA.

24. Accordingly, NPR is entitled to injunctive and declaratory relief with respect to the immediate issuance of a determination on and processing of its Request.

Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Order Defendant to immediately and fully process NPR's December 26, 2018 FOIA request and disclose all non-exempt documents immediately to Plaintiffs;
- (2) Issue a declaration that NPR is entitled to immediate processing and disclosure of the requested records;
- (3) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
- (4) Award Plaintiffs their costs and reasonable attorneys' fees in this action; and
- (5) Grant such other relief as the Court may deem just and proper.

Dated: April 11, 2019

Respectfully submitted,

/s/ Lisa B. Zycherman

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(D.D.C. attorney admission application to be filed)

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